

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DETRICK HENDERSON,

Defendant-Appellant.

UNPUBLISHED

July 31, 2001

No. 222533

Wayne Circuit Court

LC No. 96-006865

Before: Doctoroff, P.J., and Murphy and Zahra, JJ.

PER CURIAM.

Defendant, who was a minor at the time of the crime, appeals as of right his sentencing as an adult to fifteen to sixty years in prison for second-degree murder, MCL 750.317, and two years for the possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

This case arose out of a shooting that occurred when defendant was fifteen years old. According to witnesses, defendant approached a teenage neighbor, who was walking with several members of his family, and began shooting. The victim's aunt and cousins testified that defendant chased the victim through several yards before the victim fell. According to the aunt, defendant then walked over to the victim and shot him again. Defendant shot the victim six times, including twice in the head and once in the face. No motive for the shooting was offered at defendant's bench trial.

After convicting defendant of second-degree murder and felony-firearm, the trial court held a hearing to determine whether defendant should be sent to a juvenile facility or sentenced to prison. Two experts recommended that defendant be treated as a juvenile and two recommended that he be sentenced as an adult. The latter recommendations focused on the seriousness and circumstances of the crime. Overall, the reports indicated that defendant refused to discuss the crime, instead continuing to profess his innocence. He did not have a criminal record and was not found to be violent either before the shooting or during his stay in a juvenile facility awaiting sentencing. He had frequently been absent from school; however, he was reportedly doing well in the facility's education program. He told several different stories regarding the frequency of his alcohol and marijuana use but was otherwise considered cooperative. The trial court determined that defendant should be sentenced as an adult.

As part of defendant's appeal as of right from his convictions, he challenged the trial court's sentencing decision. This Court, though affirming the convictions, vacated the sentencing decision and remanded for further proceedings. See *People v Henderson*, unpublished opinion per curiam of the Court of Appeals, issued April 27, 1999 (Docket No. 203308). This Court held that the trial court had failed to make findings of fact under two of the six statutory factors that the court must consider when choosing how to sentence a minor defendant. On remand, the trial court held a resentencing hearing and briefly addressed the unconsidered factors. However, the court did not reconsider its decision to sentence defendant as an adult.

Defendant now again argues that the trial court abused its discretion by sentencing him as an adult rather than sending him to a juvenile rehabilitation facility. This Court employs a bifurcated procedure to review a trial court's decision to sentence a minor as a juvenile or as an adult. First, we review the trial court's factual findings supporting its determination regarding each statutory factor for clear error; second, we review the ultimate decision whether to sentence the minor as a juvenile or as an adult for an abuse of discretion. *People v Launsbury*, 217 Mich App 358, 362; 551 NW2d 460 (1996).

The burden is on the prosecution to establish by a preponderance of the evidence that it is in the best interests of the defendant and the public to sentence the defendant as an adult. *People v Lyons*, 203 Mich App 465, 469; 513 NW2d 170 (1994). When this crime was committed, the trial court was required to weigh six factors to determine whether a minor defendant should be sentenced as an adult or a juvenile. MCL 769.1.¹ The trial court was required to weigh each of the factors in a meaningful way when making its decision. *People v Perry*, 218 Mich App 520, 542; 554 NW2d 362 (1996). It was to make specific and detailed findings of fact for each statutory factor. *Id.* The trial court was not to give one factor preeminent weight, including the seriousness and circumstances of the offense. *Id.*; *People v Cheeks*, 216 Mich App 470, 478; 549 NW2d 584 (1996). However, it was recognized that the severity and senselessness of a crime can outweigh the other factors when they do not strongly support treating the defendant as a juvenile. See *Perry*, *supra* at 543.

On review of the record, we find that during the original sentencing hearing the trial court made findings demonstrating that it had considered and weighed four of the six factors listed in MCL 769.1. Then, after this Court ruled, during defendant's first appeal, that defendant's sentences had to be vacated because of the court's failure to detail its findings with respect to the remaining two factors, on remand the trial court indicated that it had in fact also considered those factors before rendering its decision to sentence defendant as an adult. Though its brief statements on remand leave something to be desired, we are satisfied that the trial court carefully considered and weighed the statutory factors in a meaningful way. *Perry*, *supra* at 542. We find no clear error in the trial court's factual findings, and conclude that its ultimate decision to

¹ The statute was later amended by 1997 PA 247, which made an adult sentence mandatory for certain crimes, including second-degree murder, changed the factors for consideration, and directed the trial court to give the seriousness of the crime and the defendant's record greater weight. See MCL 769.1.

sentence defendant as an adult was no abuse of discretion. *Launsbury, supra*. Accordingly, defendant's sentences are appropriate.

Affirmed.

/s/ Martin M. Doctoroff

/s/ William B. Murphy

/s/ Brian K. Zahra